

Alaska Antidegradation Workgroup, February 2-3, 2012

Summary of Meeting #1 (for Workgroup approval at March 14-15 meeting)

NOTE: The following notes include recommendations to the Alaska Department of Environmental Conservation (ADEC) from the Alaska Antidegradation Workgroup. These recommendations were formed during the February 2-3, 2012 workgroup meeting and may change in future meeting summaries. ADEC has made no decisions on the issues addressed in these recommendations.

This report summarizes the first meeting of the Alaska Antidegradation Workgroup. Each issue addressed is listed below, along with the key questions, relevant discussion, and Workgroup recommendations.

Overview

ADEC and Tetrattech provided an overview of the antidegradation policy and its origin in the Clean Water Act (CWA), key antidegradation concepts, the current Interim Antidegradation Implementation Methods, and the status of antidegradation in Alaska. ADEC noted that they are not proposing to change the antidegradation policy cited at 18 AAC 70.015.

ISSUE #1: Activities that Require Antidegradation Reviews

The first issue consists of several aspects, as described by the following questions:

- Which activities require antidegradation reviews?
- Will antidegradation be restricted to activities affecting waters of the State, waters of the U.S., or some other identified set of waters?
- If some activities have a de minimis impact, do they require antidegradation reviews?
- When should antidegradation reviews be conducted for activities authorized under a general permit?

ADEC staff perspectives on Issue #1

- Antidegradation will apply to fresh, and marine surface waters out to 3 miles.
- ADEC assumes that all designated uses apply in all waters, including drinking water, unless reclassified in 18 AAC 70.230(e).
- ADEC is asking the workgroup for their recommendation on whether waters will initially be assumed to be Tier 2.
- Mixing zones and zones of deposit allow for an exception to water quality criteria.
- The antidegradation policy applies to the waterbody as a whole.

- Alaska's Water Quality Standards (WQS) currently apply to some waters of the State that are not waters of the US. WQS and criteria apply to groundwater as well as surface waters.

Workgroup questions

Members of the Workgroup brought up several additional questions to consider during the discussion of Issue #1:

- General Permits
 - Is it necessary to public notice an antidegradation analysis for Notices of Intent (NOIs) under General Permits?
 - How do we deal with antidegradation and public notices for general permits?
 - Should there be proscriptive measures (i.e., best management practices) in the general permit?
 - How will different activity types be addressed in antidegradation analyses?
 - What is the influence of the waterbody type/quality – will different waterbody types/water quality levels receive different proscriptive measures and different levels of antidegradation analysis?
 - In response to questions raised by the Workgroup, ADEC provided an overview of general permits in Alaska, describing the range of general permits and public notice requirements.
 - Some general permits contain proscriptive best management practices and requirements for all discharges to be covered under the general permit.
 - Typically, only the general permit is public noticed.
 - Some general permits provide for more site specific provisions for specific discharges.
 - In some cases, public notice of authorizations under the general permits may be required (e.g., site-specific mixing zones).
- Will antidegradation apply to all wetland types in Alaska? Will antidegradation apply to state waters that are not "Waters of the U.S."?
- How will antidegradation apply to waters with naturally high levels of some parameters?

Workgroup recommendations and discussion

1) Which activities require antidegradation reviews?

The Workgroup recommended that activities regulated by ADEC under Clean Water Act Sections 401, 402, and 404 be subject to antidegradation requirements and reviews. This includes water quality certifications of NPDES permits; APDES general and individual permits;

and the placement of dredged or fill material into waters of the U.S. under a US Army Corps of Engineers permit, which is usually overseen by ADEC through the water quality certification process.

The Workgroup further recommended that antidegradation requirements apply only to new or expanded discharges under the categories identified above, and not to reissued permits that already have had an antidegradation review. Expanded discharges are those where past pollutant concentrations or total loads are increased beyond previously permitted amounts. Discharges are not automatically assumed to require an antidegradation review when a facility is expanded. The Workgroup recommended that increases in flows or pollutant concentrations of less than 10 percent not be considered new or expanded discharges, but rather be categorized as de minimis increases not subject to Tier 2 antidegradation reviews.

Action Item:

ADEC will consult with legal staff to determine whether or not other activities permitted, approved, authorized, or regulated by non-ADEC State agencies (e.g., timber harvest on State lands) might require some sort of antidegradation review, at least at the policy level. The Workgroup recommended that if such review is required, it should be limited to programmatic coordination between ADEC and other agencies and reviews of water quality protection measures, and not include multiple reviews and approvals for the same activity by several different agencies.

- 2) Will antidegradation be restricted to activities affecting waters of the State, waters of the U.S., or some other identified set of waters?

The Workgroup recommended that antidegradation requirements and reviews be restricted to waters of the U.S. in Alaska, as defined under the CWA. In addition, the Workgroup noted that Tier 2 protection would likely be afforded to all U.S. waters in Alaska, since they typically exceed the quality necessary to support their designated and existing uses. Alaska has not identified any Tier 3 waters yet. The Workgroup also noted that the State and federal government disagree over the definition of waters of the U.S. as it pertains to wetlands.

- 3) If some activities have a de minimis impact, do they require antidegradation reviews?

As noted above, the Workgroup recommended that increases in flows or pollutants that are less than 10 percent be considered de minimis increases not subject to antidegradation reviews.

ADEC noted that there would need to be a cumulative cap on total load increases to the receiving water(s) via an analysis of past reissuances of the permit, and of the assimilative capacity of the receiving waterbody, to prevent incremental de minimis load increases by one or more dischargers that could cumulatively result in significant

degradation without any antidegradation review. ADEC may need additional guidance from the Workgroup on addressing cumulative impacts.

4) When should antidegradation reviews be conducted for activities authorized under a general permit?

The Workgroup recommended that Tier 1 and Tier 2 antidegradation reviews and public notice for individual APDES permits, individual water quality certifications, or individual CWA 404 permits be conducted at the time of permit application review and drafting. For general permits, the antidegradation review and public notice procedures would be completed at the time the general permit is updated for reissuance, since an antidegradation review is required for any new discharges that might be covered under the general permit if the general permit is intended to cover any new discharges. For new general permits, the antidegradation review should occur at the time of permit development and issuance.

The antidegradation review conducted at the time of general permit issuance or permit reissuance would consider impacts from both existing authorized activities and new activities that may require permit coverage. ADEC can retain the ability to ensure protection of waterbodies from degradation by:

- Limiting general permit coverage to activities discharging to certain waters, such as unimpaired waters and/or non-Tier 3 waters.
- Incorporating additional antidegradation requirements in general permits for certain activities that might pose a greater threat to water quality.
- Requiring additional antidegradation reviews under certain general permits when new entities seek coverage by submitting an NOI. Prior/existing dischargers already authorized under the permit would not be affected if discharges are not expanded.
- Requiring entities seeking coverage under a general permit through NOI submittal to apply for individual permit coverage if threats to surface waters are deemed to exceed the antidegradation protection provided under the general permit.
- Performing an antidegradation review for the reissuance of a permit if no review was performed in the past, if the permit will cover new or expanded discharges.
- Determining whether the antidegradation review is applicable to all waters of the U.S. in the State or whether applicable to specific waterbodies.

The Workgroup recommended that the 404(b)(1) analyses performed by the U.S. Army Corps of the Engineers for CWA Section 404 permits, when available, should serve as the primary basis for the ADEC antidegradation review of impacts to nearby waters of the U.S. They also recommend that no antidegradation analysis is required for the fill area.

Issue #2: Baseline water quality

The second issue consists of several aspects, as described by the following questions:

- How does DEC determine if existing uses are being met without already having baseline water quality data on physical, chemical, and biological parameters?
- How would Alaska determine baseline water quality for those waters in Alaska where the water is frozen for most of the year?

ADEC staff perspectives on Issue #2

ADEC has an existing approach for determining baseline water quality under the current APDES permit program:

- There is some water quality data for waters in heavily developed areas, which is used to determine baseline water quality.
- For somewhat developed areas, existing data plus data collected by existing and prospective permittees is used to determine baseline water quality.
- Waters in undeveloped areas are considered to be unimpacted by human activities and water is assumed to be meet or exceed WQS. Water quality impacts in these areas are affected primarily by natural processes such as mass wasting of slopes, channel erosion caused by periodic high flows, high seasonal nutrient levels in small upland streams during spawning, etc.
- Many waters have naturally occurring substances that exceed numerical water quality criteria. In these cases the “natural condition” can be used as the WQS.

Workgroup questions

The Workgroup had mostly informational questions regarding this issue.

- Who collects the baseline data?
- What quality assurance and quality control measures does ADEC require?
- How are seasonal issues addressed in the baseline data?
- How will cumulative concerns be addressed through the baseline data?

Workgroup recommendations and discussion

The Workgroup recommended that ADEC retain the current baseline water quality practice under the antidegradation review procedure. Currently, ADEC decides on a permit-specific basis – no one size fits all. For waters with little or no data, the Workgroup agreed that representative waterbodies could be used, with the understanding that most of the State’s waters are not impacted by human activities. Assumptions that baseline is zero should also be acceptable where it makes sense (e.g., the presence of bark in a log transfer location). The

Workgroup recommended that the current flexibility in requiring more data be obtained, and that there is no need for a separate baseline water quality procedure. The Workgroup considered whether there were any substantive issues with multiple discharges to the same waterbody.

ADEC may want guidance from the workgroup in what ADEC should consider in making these case-by-case decisions. For example, should size of discharge or risk associated with the discharge guide ADEC in requiring baseline water quality data?

ISSUE #3: OUTSTANDING NATIONAL RESOURCE WATERS (ONRW)

The third issue consists of several aspects, as described by the following questions:

- What process should be used to nominate, evaluate, recommend, and designate an ONRW?
- Who is responsible for each of these steps and the final decision?
- How should the State determine when a waterbody has exceptional ecological or recreational significance?
- What protections apply to ONRW? Should existing permitted discharges be grandfathered?
- Should Alaska adopt an intermediate level of protection, i.e., Outstanding State Resource Waters (OSRW) or Tier 2.5?

The Workgroup began discussing this issue but will address it substantively in the next meeting.